IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 738 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE COLTD.

Versus

RAVJIBHAI RANCHHODBHAI PATEL

Appearance:

MR PV NANAVATI for Petitioner

NOTICE SERVED for Respondent No. 1, 2, 3, 4, 5, 6

CORAM : MR.JUSTICE A.R.DAVE

and

MR.JUSTICE J.R.VORA

Date of decision: 23/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. Heard learned Advocate Shri. P.V Nanavati for the appellant and learned Advocate Shri. Mehta for learned Advocate Shri A.J. Patel

2. Admit. Service of notice is waived by Shri. A.J. Patel for respondents nos. 1 to 4. As respondents nos. 5 and 6 are not necessary parties at this stage, they are permitted to be deleted. With the consent of the learned Advocates, the appeal is taken up for final hearing today.

3. Being aggrieved by the award dated 1st September, 2000 passed by the Motor Accident Claims Tribunal (Auxiliary) Ahmedabad (Rural) at Gandhinagar in Motor Accident Claim Petition No. 1663/90, this appeal has been filed by the Insurance Company.

4. The facts giving rise to the present appeal in a nut-shell are as under :-
The deceased, Shri. Ravjibhai Ranchhodbhai Patel, son of respondents nos. 1 and 2 and husband of respondent no. 3 and father of respondent no. 4 was going on a scooter on 31st March, 1990 around 11.30 p.m. While he was going from Gandhinagar towards Adalaj on the main road, all of a sudden a truck bearing Registration no. GRR 5571 came out from the left hand side of the road without giving any indication, which resulted into an accident, and as a result of the accident, the deceased expired on the next day. So as to claim compensation, respondents nos. 1 to 4, filed Motor Accident Claim Petition No. 1663/90 before the Motor Accident Claims Tribunal Auxiliary Ahmedabad (Rural) at Gandhinagar. After hearing the concerned Advocates and looking to the evidence adduced before the Tribunal, the Tribunal was pleased to award a sum of Rs. 6,75,000/- to the claimants alongwith interest at the rate of 12% from the date of the application till the date on which the amount is deposited.

5. Learned Advocate Shri. P.V. Nanavati, appearing for the appellant has submitted that the amount which has been awarded by the Tribunal is on the higher side. It has been submitted by him that the Tribunal has seriously erred in coming to the conclusion that the deceased was earning Rs. 5,400/- per month. It has been submitted by

him that an effort was made by the claimants to show that the deceased was having a flour mill and was earning substantial amount from the flour mill and was also having agricultural land in Adalaj. He was also doing agricultural activities and thus approximately a sum of Rs.5,400/- was being earned by the deceased. The said finding has been challenged by the appellant mainly on the ground that there is no justifiable reason for coming to the conclusion that the deceased was earning Rs. 5400/-. It may be noted here that learned Advocate Shri. Mehta appearing for the claimants has fairly submitted that the amount of income that has been determined by the Tribunal is slightly on higher side. He has fairly submitted that if income of the deceased is taken at Rs. 4500/- per month it would be a very reasonable amount and the claimants would readily agree to accept the amount which might be awarded on the basis of income of Rs. 4500/- per month

6. Learned Advocate Shri. P.V. Nanavati could not show anything to enable us to come to the conclusion that the deceased was earning even lesser than Rs. 4500/- per month. In the circumstances, we are inclined to accept that the Tribunal committed an error in coming to the conclusion that the deceased was earning Rs. 5400/- per month. On account of the concession which has been given by the claimants, we come to the conclusion that income of the deceased was Rs. 4500/per month.

7. On the basis of the income stated hereinabove, after deducting 1/3 of the amount which would have been expenditure of the deceased, 2/3 of the said amount would be Rs. 3000/- and by applying the multiplier of 15, the amount of compensation on that rate would be Rs. 5,40,000/-. In our opinion the Tribunal has not committed any error by considering the multiplier of 15 looking to the age of the deceased.

8. In our opinion, a sum of Rs. 5000/- has been rightly awarded by the Tribunal under the head of funeral charges and Rs. 10,000/- under the head of mental pain, shock and suffering. We do not see any reason to disturb the determination of amount under the above referred two heads.

9. In our opinion, under the head 'loss of consortium', a sum of Rs. 10,000/- should be awarded, but infact the Tribunal has awarded a sum of Rs. 15,000/-.We are therefore of the view that a sum of Rs. 10,000/- should be awarded under the head of 'loss of consortium'. It is pertinent to note that the deceased

was a young person and yet the Tribunal has not awarded any amount under the head 'loss of expectation of life'. We think it proper to award Rs. 10,000/- under the said head.

10. Under the circumstances, in our opinion, total amount of compensation which has been awarded to the claimants is required to be reduced and the amount of compensation should be awarded at Rs. 5,75,000/-.

11. The Tribunal has not determined the ratio on which the amount awarded should be distributed amongst the claimants. In our opinion, ends of justice would be served if the amount is distributed to the claimants in the following proportion:-

1. Shri. Ravjibhai Ranchodbhai Patel - Father of the deceased - 15%

2. Kamlaben Ravjibhai Patel - Mother of the deceased 25%

3. Rekhaben - widow of the deceased - 40%

4. Ronak Rameshbhai Patel - Son of the deceased 20%

12. So far as claimants, nos. 1 and 2 are concerned they are fairly aged parents of the deceased. In our opinion the entire amount payable to them should be paid by Account Payee Cheques.

13. So far as claimant no. 3, namely Rekhaben, widow of the deceased is concerned, out of the 40% amount payable to her, 15% of the total amount should be paid to her by an Account Payee Cheque whereas 25% of the total amount should be deposited with a Nationalised Bank for a period of 5 years and the interest which might accrue on the said deposit should be permitted to be withdrawn by her.

14. So far as claimant no. 4 is concerned, he is a young boy who is prosecuting his studies at present. Looking to the fact that is studying and living with his mother and grand parents, it would be just and proper to direct that the entire amount payable to him is deposited

for a period for 5 years with a Nationalised Bank. The Interest that might accrue on the said deposit shall be permitted to be withdrawn by him .

15. No amount shall be permitted to be borrowed on the security of the fixed deposit and the Fixed Deposit Receipts shall remain in possession of the Nazir of the Tribunal. Needless to say that after maturity of the fixed deposit, the amount shall be paid to the concerned claimants. In the circumstances, the appeal is partly allowed and the award is ordered to be modified accordingly. No order as to costs.

16. It is hoped that the award shall be drawn as soon as possible and the amount awarded shall be deposited by the appellant within eight weeks from today. Amount deposited with this Court should be transmitted to the Tribunal as soon as possible.

(A.R. DAVE,J.)

(J.R. VORA,J.)

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